



Crl.O.P.(MD)No.17860 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.10.2024

Delivered on : 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.17860 of 2024

and

Crl.M.P(MD)No.11029 of 2024

Abiganesh

: Petitioner/A2

Vs.

The State of Tamil Nadu rep.by
The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
Crime No.144 of 2021.

: Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 528 of B.N.S.S., to call for the records pertaining to the impugned FIR in Crime No.144 of 2021 on the file of the respondent police and quash the same as arbitrary and illegal as far as the petitioner is concerned.

For Petitioner : Mr.K.Kaviarasan

For Respondent : Mr.P.Kottai Chamy,
Government Advocate (Criminal Side)



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ORDER

This Criminal Original Petition has been filed, invoking Section 528 of B.N.S.S., seeking orders, to call for the records pertaining to the impugned FIR in Crime No.144 of 2021 on the file of the respondent police and quash the same as arbitrary and illegal as far as the petitioner is concerned.

2. The case of the prosecution is that on 03.04.2021 at about 12.00 pm, when the respondent was patrolling within the limits of the respondent police station, based on a secret information, he went to the coconut grove belonging to the first accused and found that cock fight was being held without any prior permission from the authorities concerned and on seeing the police party, all the accused fled away and that subsequently, they were surrounded and that they came to know that the accused were betting on the cocks for time pass. Hence, the respondent has registered an FIR in Crime No.144 of 2021 against five named persons and others including the petitioner for the alleged offence under Sections 289 IPC and Section 11(1)(a) of Prevention of Cruelty to Animals Act 1960.



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3. The learned counsel appearing for the petitioner would submit that the petitioner did not participate in the cock fight as alleged in the FIR and no such occurrence has taken place; that there are no specific allegations levelled against the petitioner in the FIR; that Section 289 of IPC can be invoked, if the accused had conducted themselves in a negligent manner and there is danger to human life from the animal; that Section 11(1)(a) of Prevention of Cruelty to Animals Act is about causing cruelty to the animal and as such, both the above aspects cannot go together and that therefore, very registration of the impugned FIR cannot be sustained and as such, the same is liable to be set aside.

4. The learned counsel appearing for the petitioner would further submit that the impugned FIR was registered on 03.04.2021 and no charge sheet was filed before the jurisdictional Court till filing of the present petition and as per Section 468 Cr.P.C., taking cognizance of offence punishable not exceeding one year, beyond a period of one year is barred and that since more than three years have lapsed, the impugned FIR would liable to be quashed on the ground of limitation also.



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5. Let us take the plea of limitation first. This Court had an occasion to deal with similar plea of limitation in the case of ***Kishore Vs. State represented by the Inspector of Police, Reddiyarchatram Police Station*** in ***Crl.R.C.(MD)No.614 of 2023 dated 13.07.2023***, wherein, FIR came to be registered for the offences under Sections 279 and 337 IPC on 02.04.2018 for the accident held on 02.04.2018 and subsequently, since the victim had died, the case was altered into Sections 279 and 304(A) IPC, that the first respondent has filed the final report on 02.03.2023 along with an application to condone the delay under Section 473 Cr.P.C. and the learned Magistrate has passed an order condoning the delay in filing the final report and consequently taken the case on file and that when that order was challenged before this Court on the ground that charge sheet laid was clearly barred by limitation as contemplated under Section 468 Cr.P.C., this Court, by following the judgment of the Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherian and others*** reported in ***(2014) 2 SCC 62*** and subsequent Division Bench judgment of the Hon'ble Supreme Court in ***Darshan Singh Saini Vs. Sohan Singh and others*** reported in ***(2015) 14 SCC 570*** and in the case of ***Amritlal Vs. Shantilal Soni and***



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others reported in **2022 LiveLaw (SC) 248** to the point that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence, has observed that since the accident was allegedly occurred on 02.04.2018 and a complaint came to be lodged on 02.04.2018, the date of occurrence itself, the question of invoking Section 468 Cr.P.C. does not arise at all.

6. When the decision in ***Kishore's*** case above referred came to be referred before Hon'ble Mr.Justice N.Anand Venkatesh, while dealing with two cases in ***A.Kaliyaperumal Vs. The Superintendent of Police, Cuddalore and others*** and ***Subash and others Vs. State and others*** reported in **2024-1-LW(Crl)332**, the learned Judge, by observing that the judgment of the Constitution Bench in ***Sarah Mathew's*** case and the cases referred by the Constitution Bench, ***Krishna Pillai Vs. T.A Rajendran (1990 Supp SCC 121)***, ***Bharat Damodar Kale Vs. State of A.P. ((2003) 8 SCC 559)*** and ***Japani Sahoo Vs. Chandra Sekhar Mohanty ((2007) 7 SCC 394)***, all had arisen from the private complaint cases and as such, the



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decision of the Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathew's*** case, cannot be made applicable to the police cases, had practically over ruled the decision in ***Kishore's*** case. No doubt, as rightly observed by the learned Judge, ***Sarah Mathew's*** case and the cases referred therein had arisen from the private complaint cases. But it is pertinent to note that the Constitution Bench in ***Sarah Mathew's*** case has nowhere stated that the decision given therein is applicable only to the private complaint cases under Section 190(1)(a) and not to the police cases under Section 190(1)(b) of the Code of Criminal Procedure.

7. As already pointed out, the Constitution Bench has specifically held that the relevant date for the purpose of computing the period of limitation under Section 468 Cr.P.C. is the date of filing of the complaint or the date of institution of prosecution. The learned Judge has interpreted the words “institution of prosecution” in a narrow way and observed that the same are being used in the enactments such as the Drugs and Cosmetics Act, which would only mean about commencing prosecution by filing the complaint under Section 190(1)(a) before the Magistrate and that the words institution of prosecution used in ***Sarah Mathew's*** case had nothing to do



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with the prosecution under Chapter XII of the Code of Criminal Procedure.

The learned Judge has further observed that date of filing of the complaint would only denote the private complaint which came to be defined under Section 2(d) Cr.P.C. and the information given to the police officer under Section 154 Cr.P.C., cannot be taken as a complaint. More importantly, the learned Judge has relied on the judgment of the Hon'ble Supreme Court in *Arun Vyas Vs. Anita Vyas* reported in (1999) 4 SCC 690, Three Judges Bench decision of the Hon'ble Supreme Court in *State of H.P. Vs. Tara Dutt* reported in (2000) 1 SCC 230 and another Two Judges Bench decision in *Ramesh Vs. State of T.N.* reported in (2005) 3 SCC 507, wherein, it has been held that the relevant date for reckoning the cut-off is the date on which the final report was filed and not the date on which the FIR was registered. Considering the above decisions, we can categorize the above decisions in two parts; those rendered prior to and those subsequent to the judgment of the Constitution Bench in *Sarah Mathew's* case.

8. It is pertinent to note that since a Two Judges Bench of the Hon'ble Supreme Court noticed a conflict between the Two Judges Bench decision in *Bharat Damodar Kale's* case and another Two Judges Bench



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decision in ***Japani Sahoo's*** case above referred with the Three Judges Bench decision in ***Krishna Pillai's*** case, the matter was referred to Larger Bench and hence, Five Judges Bench has dealt with the issue in extenso and came to the conclusion that for the purpose of computing the period of limitation under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate had taken cognizance.

9. In ***Sarah Mathew's*** case above referred, the Hon'ble Supreme Court has examined the present issue in the context of Article 14 of the Constitution and opted for reasonable construction rather than literal construction and the relevant passage is extracted hereunder:-

“37. We also concur with the observations in Japani Sahoo, where this Court has examined this issue in the context of Article 14 of the Constitution and opted for reasonable construction rather than literal construction. The relevant paragraph reads thus:

“The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take



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*cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalised because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of *litera legis*. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the court may make it unsustainable and *ultra vires* Article 14 of the Constitution.”*



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10. The word “prosecution” has not been defined anywhere in the Code of Criminal Procedure and a Division Bench of Allahabad High Court in ***Suneel Kumar Singh Vs. State of U.P.*** in ***Crl.A.No.724 of 2017 dated 18.02.2019***, has observed as follows;

“The prosecution has not been defined specifically in the light of proviso to Section 24(8) Cr.P.C. The meaning of word 'prosecution' as defined in Webster Dictionary, 3rd Edition is as follow;

"the carrying out of a plan, project, or course of action to or toward a specific end."

In view of the aforesaid definition the 'end' for which a plan or project is carried out is called prosecution. In respect of proviso to Section 24(8) Cr.P.C. prosecution in respect of an offence begin with putting the law into motion by any individual or sufferer of crime. The 'end' in a prosecution within the meaning of proviso to sub-section 8 of section 24 Cr.P.C. would be adjudication of guilt of an offender who is charged with commission of an offence in accordance with procedure established by law in a court constituted under this code. So the prosecution starts with giving information of commission of crime and continued during investigation or inquiry, trial of offender and if any appeal is filed finally end by an order passed in appeal.”



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11. Considering the above, it can easily be inferred that the prosecution starts with giving information of commission of crimes. As rightly contended by the Government Advocate (Criminal Side), the words “institution of prosecution” used in ***Sarah Mathew's*** case cannot be limited to the private complaint cases.

12. At this juncture, it is necessary to refer the subsequent Division Bench judgment of the Hon'ble Supreme Court in ***Amritlal's*** case,

“In Sarah Mathew, the Constitution Bench of this Court examined two questions thus: -

3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2. (ii) Which of the two cases i.e. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121] or Bharat Kale [Bharat Damodar Kale v.



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State of A.P., (2003) 8 SCC 559] (which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]), lays down the correct law?

The Constitution Bench answered the aforesaid questions as follows: -

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.

(emphasis supplied)



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Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009.”

13. In ***Amritlal's*** case, the offence was allegedly committed on 04.10.2009 and complaint came to be lodged on 10.07.2012, that final report came to be filed on 13.11.2012 and that the learned Magistrate had taken cognizance on 04.12.2012 and in that scenario, the Hon'ble Apex Court has observed that since complaint came to be lodged on 10.07.2012 for the offence alleged to have been committed on 04.10.2009, the same is well within the period of limitation of three years.

14. In ***Johnson Alexander Vs. State by CBI, ACB*** in ***Crl.A.No.1478***



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of 2010 dated 26.02.2015, where the occurrence was allegedly held in the year 1995, FIR was lodged and the proceedings were initiated in the year 1999 and cognizance was taken on 21.06.2001, the Hon'ble Supreme Court has quashed the proceedings in view of the bar under Section 468 Cr.P.C. for the reason that there was no application filed by the prosecution explaining the delay caused from the date of the alleged occurrence till the date of filing of the complaint and registering the FIR. It is pertinent to note that the Hon'ble Apex Court has specifically assigned the reason that the complaint and FIR came to be registered beyond one year, therefore, the proceedings are not maintainable in law and on that ground, quashed the proceedings.

15. In light of the above discussion, it is clear that the institution of prosecution, for the purposes of Section 468 Cr.P.C., refers to the date of filing the complaint or registering the FIR. Consequently, if the complaint or FIR is filed within the prescribed limitation period, the proceedings cannot be deemed barred by Section 468 merely because the order of cognizance or issuance of process occurs on a subsequent date.



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16. At the risk of repetition, judgments relied on by the learned Judge of this Court in *A.Kaliyaperumal and Subash's* case above referred, were rendered prior to the Constitution Bench judgment in *Sarah Mathew's* case. More importantly, the legal position declared by the Constitution Bench in *Sarah Mathew's* case came to be reiterated by a Division Bench of the Hon'ble Supreme Court. In light of this, reliance on earlier judgments of the Hon'ble Supreme Court, prior to the Constitution Bench, is no longer permissible. The Constitution Bench judgment, as reaffirmed by the Division Bench, is binding and taken precedence over earlier decision.

17. The Hon'ble Supreme Court in *Suganthi Suresh Kumar Vs. Jagdeeshan* reported in *AIR 2002 SC 681* has specifically held that it is impermissible for the High Court to overrule its decision on the ground that Supreme Court did not consider the other points, it is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. In *Anil Kumar Neotia and others Vs. Union of India and others* reported in *AIR 1988 SC 1353*,



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it has been held that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.

18. The sole contention raised was that the Constitution Bench laid down the dictum only for private complaint cases, not police cases. However, a subsequent Division Bench of the Supreme Court has unequivocally clarified that the Constitution Bench judgment is indeed applicable to the police cases. In light of this authoritative clarification, this Court has no jurisdiction or power to deviate from the Supreme Court's binding precedent.

19. Section 473 Cr.P.C. is a vital provision that empowers courts to take cognizance of a complaint even after the expiry of the limitation period. This section is pivotal in administering justice, as it allows complainants or aggrieved persons to institute complaints beyond the prescribed period, provided the court is satisfied with the facts and circumstances of the case that the delay has been properly explained or that it is necessary to extend the period in the interest of justice.



20. At this juncture, it is necessary to refer the following passages in

Sarah Mathew's case above referred,

“28. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by



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the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 of the Cr.P.C. would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corporation Ltd. v. Ayodhya Prasad Mishra).”

21. The view taken by the Hon'ble Supreme Court in ***Sarah Mathew's*** case above referred, is primarily for the reason that so far as the complainant is concerned, as soon as he files a complaint, he has done everything which is required to be done by him and thereafter he has no control over the proceedings or any delay in taking cognizance.

22. After filing a private complaint, the complainant has no further role to play, and it is solely the court's responsibility to take cognizance and proceed. In my view, this reasoning should also apply to cases instituted through an FIR. When an informant diligently lodges an FIR within the limitation period, the police, as the statutory authority, take over the



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responsibility for registration and investigation. The complainant/informant has no control over the police's actions, including registration, investigation, and filing of the final report. If the police fail to take timely action, the complainant/informant should not be penalized for the police's inaction. Consequently, the complainant/informant cannot be held responsible for any subsequent delays in investigation, taking cognizance, issuing process, or any other action contemplated under law.

23. Considering the above, for the purpose of computing the period of limitation for taking cognizance of an offense under Section 468 Cr.P.C., this Court has no hesitation to hold that the relevant date is when the first information was given to the police, not when the police submitted the final report to the court.

24. It is a fundamental principle of law that the act of sovereign authorities shall not prejudice anybody. Therefore, for the inaction or delay on the part of the police authority or the court, the complainant/informant should not be penalized, as it would be unjust to deny them justice due to circumstances beyond their control.



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25. The Parliament, in response to the judgments of the Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathew's*** case, as interpreted by the subsequent Division Bench of Hon'ble Supreme Court in ***Amritlal's*** case, while enacting the BNSS, incorporated an explanation to clarify the computation of the period of limitation. Section 514 BNSS, corresponding to Section 468 Cr.P.C., now includes an explanation that provides clarity on this issue. Section 468 Cr.P.C. states:-

“468. Bar to taking cognizance after lapse of the period of limitation.-(1)Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2)The period of limitation shall be -

(a)six months, if the offence is punishable with fine only;

(b)one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c)three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3)For the purposes of this section, the period of limitation,



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in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

26. The explanation added to Section 514 BNSS reads:-

“Explanation.—For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.”

27. This explanation, along with Section 515 BNSS (corresponding to Section 469 Cr.P.C.), conclusively resolves the issue in dispute. The explanation to Section 514 BNSS unequivocally states that the relevant date for computing the period of limitation is the date of filing the complaint under Section 223 BNSS or recording the information under Section 173 BNSS.

28. In the present case, the occurrence took place on 03.04.2021, and the FIR was registered on the same day. Consequently, the date of institution of prosecution is 03.04.2021, being the date of FIR registration.



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In light of the settled legal position, it is clear that the case is not barred by limitation, as the charge sheet filing date is irrelevant for computing the limitation period. Therefore, the prosecution in this case is well within the prescribed limitation period.

29. Section 289 of the Indian Penal Code (IPC) is a vital provision that aims to penalize individuals who negligently handle animals, thereby endangering human life or causing injury. To attract Section 289 IPC, the prosecution must prove three essential elements:

1. The accused acted negligently or rashly.
2. The conduct involved the handling or management of an animal.
3. The conduct likely endangered human life or caused harm to any person.

30. In other words, the prosecution must demonstrate that the owner's actions were rash and negligent, endangering human life and causing harm. The mental element of negligence or rashness is a crucial aspect of establishing liability under Section 289 IPC.



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31. The Prevention of Cruelty to Animals Act aims to prevent animal cruelty and promote their welfare. Section 11 of the Act defines cruelty to animals and prescribes punishment for the same. Specifically, Section 11(1)(a) states that any person who beats, kicks, or otherwise treats animals cruelly shall be punishable with a fine or imprisonment, or both.

32. In the case on hand, as already pointed out, the prosecution has alleged that cock fight was being held.

33. The learned counsel for the petitioner would rely on the decision of this Court in ***Rajasekar Vs. State rep.by the Inspector of Police, Vathalai Police Station, Trichy (Crl.O.P(MD)No.2239 of 2022, dated 03.02.2022***, wherein a learned Judge of this Court, in a similar case filed under Sections 289 of IPC and 11(1)(a) of Prevention of Cruelty to Animals Act, has held that both the Sections cannot go together.

34. As rightly pointed out by the learned counsel for the petitioner, the prosecution has nowhere stated that the cocks were beaten or were tortured or allowed to suffer pain. Moreover, it is not the case of the



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prosecution that the accused had handled with the cocks negligently so as to endanger human life or cause harm to any person. The prosecution has not whispered anything as to who are the owners of the cocks and what way they had acted rashly and negligently endangering human life and causing harm.

35. Considering the prosecutor's failure to establish a *prima facie* case, this Court has no hesitation in concluding that there is no sufficient ground to proceed against the petitioner. In light of these findings, this Court is of the clear view that it is a fit case for quashing the FIR invoking Section 528 of BNSS.

36. In the result, this Criminal Original Petition stands allowed and the FIR in Crime No.144 of 2021 on the file of the first respondent police, against the petitioner is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-delivery order made in
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and
Crl.M.P(MD)No.11029 of 2024

Dated: 29.10.2024